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absence of any act on her part to encourage him in his negligence. *Louisville, etc., Ry. Co. v. Creek*, 130 Ind. 139, 29 N. E. 481; *Chicago, etc., Ry. Co. v. Spilker*, 134 Ind. 380, 33 N. E. 280. However, where a traveler riding with another, having an equal opportunity to discover and avoid danger, is injured through the negligence of the driver and another he is himself guilty of such negligence as precludes a recovery. *City of Vincennes v. Thuis*, 28 Ind. App. 523, 63 N. E. 315; *Bush v. Union Pac. Ry. Co.*, 62 Kan. 709, 64 Pac. 624.

In the principal case it is clear that the plaintiff had no control over the driver, and that she had not an equal chance to avoid the danger. She should have been allowed to recover for her injuries—the court seems to have erred when it held that the negligence of the driver is imputed to her.

**PARENT AND CHILD—CUSTODY OF CHILD—TRANSFER.**—The father and mother were husband and wife. There was an agreement between the mother and her aunt whereby the aunt should on the mother's death take the child in question into her custody and rear it. The father was not a party to this agreement. At the time of the mother's death, the aunt took possession of the child. It is admitted that both the father and the aunt were proper persons to have custody of the infant. *Held*, father can regain possession of his child. *Zink v. Milner* (Okla.), 135 Pac. 1.

No contract for the disposition of a child can be made by the father during his life time, the mother not participating therein, that will prevent the mother from recovering the custody of her child after the death of the father. *Moore v. Christian*, 56 Miss. 408, 31 Am. Rep. 375; *State v. Reuff*, 29 W. Va. 751, 2 S. E. 801, 6 Am. St. Rep. 676. Neither the mother nor the father can make a valid disposition of their children by will as against the surviving parent. *People v. Boice*, 39 Barb. (N. Y.) 307; *Hernandez v. Thomas*, 50 Fla. 522, 39 So. 641, 2 L. R. A. (N. S.) 203. The father can regain custody of a child given into the keeping of third parties in pursuance of a contract made by the mother on her death-bed and to which the father assented. *Hibbett v. Bains*, 78 Miss. 695, 29 So. 80, 51 L. R. A. 839; *Bailey v. Gaston* (Ala.), 62 So. 1017. Even when the mother has been awarded the child by a decree of divorce, she cannot deprive the father of its custody after her death. *In re Neff*, 20 Wash. 652, 56 Pac. 383.

**PRINCIPAL AND SURETY—EFFECT OF UNAUTHORIZED PAYMENTS TO THE PRINCIPAL.**—The plaintiffs were owners of a building in course of construction and held the defendant's bond of indemnity against loss in case of default by the building contractor. The building contract specified that in addition to monthly payments a final percentage should be retained until the completion of the building. The bond stated that unless the final payment were made with their consent no liability should attach to the surety. The plaintiffs made a premature payment and later the contractor defaulted. The action was brought to hold the sureties on their bond. *Held*, the failure to hold the final percentage